



Medical Marijuana Registry

4300 Cherry Creek Drive South, Denver, CO 80246-1530 • 303-692-2184

E-mail: medical.marijuana@state.co.us • Website: www.cdphe.state.co.us/hs/medicalmarijuana

Medical Marijuana Registry Physician Update February 2012

Happy New Year! This newsletter provides a brief update on policies, procedures and activities at the Medical Marijuana Registry. For more details and to keep current, please visit the website often. **For questions or comments, please contact us at 303-692-2184 or medical.marijuana@state.co.us.**

Physician Delegation of Medical Marijuana Evaluations or Recommendations

The Colorado Medical Board ("CMB") has received numerous questions from members of the public asking for guidance regarding the delegation of medical marijuana evaluations or recommendations to a physician assistant or an advanced practice nurse. It is the CMB's position that a physician may not delegate functions of a medical marijuana evaluation or recommendation to physician assistants or advance practice nurses.

First, under CMB statutes and rules, physicians do not delegate any functions to advance practice nurses ("APN"), who are governed by the Nurse Practice Act at Title 12, Article 38, Colorado Revised Statutes. As a result, a physician may not delegate any part of a medical marijuana evaluation or recommendation to an APN.

Second, physicians may not delegate the functions of a medical marijuana evaluation or recommendation to a physician assistant. Section 12-36-106(5), C.R.S. and CMB Rule 400 govern the delegation of functions from a physician to a physician assistant. Both of these documents can be found on the CMB's website at

<http://www.dora.state.co.us/medical/statutesrulespolicies.htm>.

However, specific requirements for medical marijuana evaluations and recommendations are also found in the Colorado Constitution, state statutes and state rules. From a purely procedural standpoint, at a minimum, Article XVIII, Section 14 of the Colorado Constitution and Section 25-1.5-106, C.R.S., require that a physician making a medical marijuana evaluation or recommendation must establish a bona-fide physician-patient relationship. Such a relationship may not be created or established through any delegate, including a physician assistant.

There may be other, additional reasons beyond the scope of this discussion why a physician could not delegate the tasks of making an assessment or recommendation for medical marijuana for a patient.

This statement is not intended to serve as legal advice. Please contact an attorney for a legal opinion regarding your specific concerns or situation regarding medical marijuana assessments or recommendations.

Marschall Smith, Program Director
Colorado Department of Regulatory Agencies
Division of Registrations Healthcare Section

Changes to Fee Waiver Process: Effective January 1, 2012, the Registry will only accept certified Colorado tax returns as proof of income. To apply for a fee waiver, patients must submit a Request for Fee Waiver/Tax-Exempt Status (form #MMR1010) with their application packet. Several community partners have asked the Registry how patients who are not required to file a tax return can meet these requirements. "A person who is not required to file a federal return would generally report \$0 federal taxable income, although their gross income would have to be reported on line 25 of the Colorado return," said Richard Giardini, Taxpayer Service Division Director for the Colorado Department of Revenue. "There are many volunteer groups that prepare returns for the low income for free."

Application fee reduced: Effective January 1, 2012, the application fee is \$35. Please advise patients to carefully assess the application fee that must be submitted with their paperwork. **The Registry has a 'no refund' policy.**

New Forms December 2011: The Registry has released new versions of all forms effective December 1, 2011. Modifications have been made to the forms in response to regulatory changes and the reduction of application fees effective January 1, 2012. The forms also feature changes recommended by community partners. Please begin using these forms immediately. The Registry will accept the October 2011 version of Physician Certifications until February 29, 2012.

Delayed application processing: Following notification by law enforcement agencies of potentially fraudulent physician certification forms, the Registry began holding applications for physician verification. Approximately 4,400 applications were delayed. All of these applications have now been processed. Patients who have not received a response should contact the Registry to follow-up on their paperwork.

Tips for Successful Submission: Included with this newsletter is a checklist patients may use during their application process to increase potential for successful submission of paperwork.

For more information, please visit:
www.cdphe.state.co.us/hs/medicalmarijuana.

Physician Certification Policies

The Registry has conducted an extensive review of all its written materials and policies to ensure compliance with State statutes and to increase readability and comprehension rates. As a result of this analysis, **new forms were released on December 1, 2011.**

Physicians recommending the use of medical marijuana to their patients should be aware of the following policies and procedures.

1. **Bona fide Physician-Patient Relationship:** Based on Board of Health regulations, only physicians who have a bona fide physician-patient relationship with a particular patient may “certify to the state health that the patient has a debilitating medical condition and that the patient may benefit from the use of medical marijuana.” A bona fide relationship means:
 - a. A physician and a patient have a treatment or counseling relationship, in the course of which the physician has completed a full assessment of the patient's medical history and current medical condition, including an appropriate personal physical examination;
 - b. The physician has consulted with the patient with respect to the patient's debilitating medical condition before the patient applies for a registry identification card; and
 - c. The physician is available to or offers to provide follow-up care and treatment to the patient, including but not limited to patient examinations, to determine the efficacy of the use of medical marijuana as a treatment of the patient's debilitating medical condition.
2. **Physicians in ‘Good Standing’:** The Physician Certification must be completed and signed by a M.D. or D.O. with an active Colorado medical license. Physicians with conditions or restrictions on their license, or out-of-state license, may not sign the form.
3. **Submitting new Physician Certifications:** Physician Certifications are submitted annually as part of the application process. Physician Certifications cannot be received by fax from the physician’s office. The patient must submit all paperwork in one package to ensure the application is complete and can be processed. Physician Certifications submitted separately from the application process will be rejected. If a patient’s homebound status has changed, the patient may submit form #MMR1011 Change of Homebound Status, which includes a Physician Certification.
4. **Confidentiality of Patient and Physician Data:** Information gathered from the application packet, including the Physician Certification, is used to determine a patient’s eligibility for a Medical Marijuana Registration Card. All patient and physician records are confidential. The Registry is required to maintain statistical records and provide aggregate data to State regulatory agencies to ensure legislative compliance. This information does not include confidential indicators associated with patients or physicians.
5. **Medical Diagnosis and Plant Count Recommendations:** The Registry approves patient applications within legislative parameters. Registry staff are not qualified or permitted to provide guidance regarding diagnosis or plant count recommendations for patients. If a physician does not select a plant count option on the Physician Certification, the standard count of 6 plants/2 ounces of useable marijuana is entered into the patient’s records.
6. **Match Signature to DEA Certificate:** Staff verify all physician names and signatures against a list of doctors for whom we have current DEA certificates on file. When the physician's information on the Physician Certification does not match the DEA certificate, the form is rejected. **Please provide the physician’s full, legal name on all forms.**